think should be adequate recompense. Judgment will be entered accordingly for the plaintiff with costs.

The defendants however have offered to make a public apology through the Press in the following terms:

"I, Chia Thye Poh, editor of the *Barisan*, a Chinese language publication of the Barisan Sosialis and the Barisan Sosialis Party of Singapore hereby inform the public that in a publication of the said organ in issue No. 83 of the said Barisan and dated the 26th day of August, 1964, a report on page four of the said issue contained certain statements with the heading 'Chairman of the Nanyang University Students' Fellowship took re-examination in English on other's behalf'. Among other things, it was also stated in the said organ that Yap Bor Lim, Chairman of the abovenamed Fellowship went on behalf of a female student into the hall and sat for a re-examination in English and so forth. The effect of the statements could have created an erroneous impression that Mr. Yap Bor Lim was a cheat and an imposter.

We are now convinced that the statements and imputations referred to and concerning Mr. Yap Bor Lim are wholly unfounded and we hereby withdraw them in toto. We tender our profound regrets and apologies to Mr. Yap Bor Lim for having published them and for any pain or annoyance that our untrue statements may have caused to him".

If an apology as aforesaid is published to the satisfaction of the Registrar in the earliest possible issue of each of the *Barisan*, the *Nanyang Siang Pau* and the *Sin Chew Jit Poh*, damages will then be reduced to $3,000. Costs will be on the higher scale in any event.

I do not think that this case calls, at this stage, for an injunction against repetition of the libel. If there should be any repetition it is obvious that damages will undoubtedly, in any future proceedings, be considerably enhanced.

Order accordingly.

Solicitors: *Lee & Lee; T. T. Rajah.*

THE CHARTERED BANK v. YEOH BOK HAN

[O.C.J. (Hepworth J.) May 21, 1965]

[Penang — Civil Suit No. 35 of 1964]

Banks and Banking — Cheques — Post dated — Crossing of with words "Credit a/c....." — Whether restrictive endorsement — Holder in due course — Bills of Exchange Ordinance, 1949, s. 35.

Bills of Exchange — Consideration — Failure of — Defence.

The bank claimed against the defendant as drawer of 5 cheques drawn by him on the Malayan Banking Ltd., Alor Star, for the sum of $2,000 each totalling $10,000, made payable to five firms respectively or to bearer. They claimed that they became the bearers of the said cheques which were duly presented by them on the due dates, but were dishonoured and returned with the words "payment stopped". They gave notice of dishonour and claimed that they were holders in due course of the said cheques having given value in good faith therefor to a rice mill from whom they received the said cheques.

In his defence the defendant said that those cheques were not cheques which had been given to the rice mill in payment for rice already delivered, but were given in payment for rice to be delivered and were only to be presented for payment after the delivery of the rice and accordingly it was fraudulent for the rice mill to negotiate the cheques prior to the delivery of the rice. He alleged that the bank knew that the cheques were only to be presented for payment if the rice was delivered or, if they did not know, they were negligent in not knowing and that accordingly the bank were not holders in due course. Further the defendant pleaded that the bank were only collecting agents on behalf of the rice mill because the words "Credit A/c Seng Heng Oil and Rice Mill" was a restrictive endorsement under section 35 of the Bills of Exchange Ordinance which prevented the further negotiation of the cheques.

Held: (1) the bank had no knowledge of any irregularity and were not negligent in having no such knowledge;

(2) the words "Credit A/c Seng Heng Oil and Rice Mill" did not constitute a restrictive endorsement under section 35 of the Bills of Exchange Ordinance but were a mere direction not to credit any other customer's account but the rice mill's account;

(3) a banker who is asked by a customer to collect a crossed cheque and who, pursuant to a contract express or implied, credits the customer forthwith with the amount of the cheque before that amount has been received becomes a holder in due course. The payment that he subsequently receives on the cheque is for himself and not for the customer. This position is not altered whether the amount of the cheque is drawn against or not by the customer subsequent to its crediting or the amount is utilised by the banker in reduction of an overdraft. The question must be whether there exists an agreement to give immediate credit before clearance. In this case the bank accepted post dated cheques and issued delivery orders in respect of those cheques by agreement between the bank and the rice mill and therefore they were holders in due course of the 5 cheques.

Cases referred to:—

(1) *National Bank* v. *Silke* [1891] 1 Q.B. 435.

(2) *Bank of China* v. *Synn Lee & Co. Ltd.* [1962] M.L.J. 91.

CIVIL SUIT.

Chin Yew Choe for the plaintiffs.

A. Jayadeva for the defendant.

Cur. Adv. Vult.

Hepworth J.: The plaintiffs are the Chartered Bank who have a place of business at 24, Bagan Luar Road, Butterworth, Province Wellesley, and the defendant is a business man residing at Batu 3½ Pengkalan Kundor, Alor Star, Kedah.

The plaintiffs claim against the defendant as the drawer of 5 cheques drawn by him on the Alor Star branch of the Malayan Banking Limited for the sum of $2,000 each, totalling $10,000 and bearing numbers 170361, 170362, 170363, 170364 and 170365, the first three of which are dated the 26th December, 1963, and the last two, the 28th December, 1963, and made payable to Chop Eng Seng, Chop Eng Huat Chan, Chop Seng Huat, Chop Thong Hin and Chop

Hup Seng Hong respectively or to bearer.

The plaintiffs claim that they became the bearers of the said cheques which were duly presented by them for payment on the due dates, but were dishonoured and returned with the words "Payment Stopped".

The plaintiffs claim that they are holders in due course of the said 5 cheques having given value in good faith therefor to Messrs. Seng Heng Oil and Rice Mill (hereinafter referred to as the rice mill) from whom they received the said cheques.

The defendant had notice of dishonour of the said cheques by a notice issued to him on the 2nd January, 1964.

The defendant says that the post-dated cheques handed by the rice mill to the plaintiffs were not cheques which had been given to the rice mill in payment for rice already delivered. The defendant says that these cheques were given to the rice mill in payment for rice to be delivered and were only to be presented for payment after the delivery of that rice and that accordingly for the rice mill to negotiate the cheques prior to the delivery of the rice was fraudulent. The defendant says that the plaintiffs knew that the cheques given by the defendant to the rice mill were only to be presented for payment if the rice was delivered or, if they did not know, then they were negligent in not knowing and that accordingly the plaintiffs are not holders in due course.

In addition the defendant pleads that the plaintiffs were only collecting agents on behalf of the rice mill by virtue of a restrictive endorsement on all the cheques reading "Credit A/c Seng Heng Oil and Rice Mill". The defendant submits that this restrictive endorsement prevents the further negotiation of the cheques with the result that the plaintiffs cannot be holders in due course but only collecting agents.

So that what the defendant is saying is firstly that by virtue of the restrictive endorsement the plaintiffs were only collecting agents on behalf of the rice mill and secondly, even if this is not so, that they are not holders in due course by virtue of the fact that they had express or implied knowledge of the fraud of Tan Yong Soo, the managing partner of the rice mill.

From the evidence it appears that the facts leading up to the dishonour of these cheques are as follows.

The partnership called the Seng Heng Oil and Rice Mill (the rice mill) of whom one Tan Yong Soo (D.W.5) was the managing partner, opened a current account with the plaintiffs at their Butterworth branch in 1959. Shortly afterwards an overdraft account was approved. At first the overdraft was $60,000 but it was increased by various stages to a maximum of $800,000 by the beginning of 1962.

This overdraft was secured by the pledge of stocks of padi and rice. A document referred to as the lease agreement (P.2) was entered into between the plaintiffs and the rice mill, the effect of which was that the plaintiffs became the tenants and occupiers of the godowns and the rice mill. The plaintiffs were given possession of the premises and employed their own storekeeper to look after the premises and the stocks of rice and padi therein.

In addition there was a document referred to as the pledge agreement (P.1) which was entered into between the plaintiffs and the rice mill whereby all stocks of padi and rice in the said godowns and rice mill at any time were pledged to the plaintiffs.

Rice was issued to the rice mill by the plaintiffs' storekeeper on the authority of delivery orders signed by the plaintiffs' Butterworth manager. The plaintiffs therefore had at all times a control and a check that there was sufficient rice and padi to secure the overdraft. The intended maximum of the overdraft was to be 15% below the maximum value of padi and rice in the godowns.

There was a padi stock book (P.3) and a rice stock book (P.4) which showed the receipts and issues of padi and rice respectively. In addition there were daily returns for padi and rice which showed the daily movements of stocks of padi and rice at the godowns and rice mill. These daily returns were normally signed by the storekeeper and by the rice mill's representative.

In November, 1962, there was a stock shortage of padi which the manager of the plaintiffs' Penang branch, the manager of the plaintiffs' Butterworth branch (P.W.1) and the rice mill's representative agreed at 10,000 piculs. This shortage was adjusted by writing off the figure of 10,000 piculs in the padi stock book. When this had been done there was insufficient security to cover the overdraft and the rice mill were requested to put the matter right. This was done by the rice mill collecting outstanding accounts and handing a number of cheques, some current and some post-dated, to the plaintiffs, and as a result the plaintiffs allowed the rice mill to continue to operate the account.

The result was that at the end of 1962 a total of about 15,500 piculs had been written off, the value of which was $240,000 but that did not mean necessarily that there was insufficient security for that amount. The security appears to have been short by about $120,000 which was subsequently reduced by the sale of some property and by the current and post-dated cheques to which I have already referred.

About May, 1963, the practice began of the plaintiffs issuing delivery orders against post-dated cheques given them by the rice mill, that is to say post-dated cheques handed to the rice mill by their customers. Evidence was given that it was a custom of the trade for suppliers of rice to accept post-dated cheques from their customers in payment for the rice supplied in order to give the customers time to sell the rice. On production of the post-dated cheques the manager of the plaintiffs' Butterworth branch would issue a delivery order for rice to the amount of the post-dated cheque or cheques. For this purpose one bag of rice was valued at between $40 and $41 so that the number of bags covered by the delivery orders was usually the total of the post-dated cheques divided by 41. The delivery order was handed to the rice mill's representative while the post-dated cheques were kept in the manager's safe of the plaintiffs' Butterworth branch and were presented on the due dates in due course.

Prior to November, 1963, few, if any, of such post-dated cheques were dishonoured.

At the beginning of November, 1963, a number of post-dated cheques were handed by the rice mill's representative to the plaintiffs' Butterworth branch, totalling $200,000. Most, if not all, of these cheques were dishonoured on presentation. Amongst these cheques were the 5 cheques which are the subject matter of this action.

P.W.1 stated that the post-dated cheques received by the plaintiffs from the rice mill's representative in November, 1963, were understood to be post-dated cheques which had been given in payment for rice which had already been sold and that delivery orders were issued in respect of all of these cheques. From the rice stock book, P.4, (pages 32 and 33 of "A") the total amount of rice issued between the 4th November, 1963, and the 11th December, 1963, was 8,835 bags, which at $40 a bag gives a figure of $353,400. This tends to support P.W.1's story that delivery orders were prepared in respect of the $200,000 worth of post-dated cheques, in so far as rice to a greater value than those cheques was issued, although some of that rice would have been for Government account and issued without payment.

As I have already said the 5 cheques with which we are here concerned were drawn by the defendant in favour of 5 different payees. When the defendant was asked why he gave Tan Yong Soo 5 cheques instead of one the defendant said that it was at Tan Yong Soo's request. When the defendant was asked why these 5 cheques were made out to different payees the defendant stated that Tan Yong Soo told him that he was going to pay these cheques to his, Tan Yong Soo's, padi suppliers. The defendant however agreed that even if the cheques had been made payable to Tan Yong Soo he, Tan Yong Soo, could have made the cheques payable to his padi suppliers by endorsing the cheques. When the defendant was again asked why he thought that Tan Yong Soo asked for the 5 cheques to be made payable to 5 different payees the defendant replied because he thought that Tan Yong Soo was going to cheat him. The defendant however was unable to say in what way that would help Tan Yong Soo to cheat him.

Tan Yong Soo stated in evidence that the 5 payees were fictitious persons and that he himself endorsed the cheques. When he was asked why the 5 cheques were made payable to fictitious payees he said it was because he wanted the defendant to think that he, Tan Yong Soo, wanted to make use of the cheques for the purchase of padi but actually he did not intend to buy padi with them.

It is a little difficult to follow the evidence of the defendant and Tan Yong Soo on this point. It was the defendant's case that he had entered into a contract with Tan Yong Soo for the delivery by Tan Yong Soo to him of certain quantities of rice on or before the 21st December, 1963, and that these cheques post-dated to the 26th and the 28th December, 1963, were given as payment for this rice on the understanding that if the rice was not delivered by the due date then payment of these cheques would be stopped. It seems to me that the only satisfactory explanation of why these 5 cheques were endorsed with the names of fictitious payees is that the purpose was to make P.W.1 think, as in fact he did, that these were cheques issued by the defendant in payment for rice already received in view of the custom of the trade which I have already mentioned for purchasers of rice to give post-dated cheques and sellers to accept these post-dated cheques in payment in order to give the purchasers time to sell the rice to their customers. In other words that these cheques were in no way different from the many post-dated cheques which had been received by the plaintiffs since May, 1963, and which had been honoured. Had it been a genuine transaction as submitted by the defendant I can see no purpose whatever in issuing 5 cheques made payable to 5 different fictitious payees when one or at the most 2 cheques made payable to Tan Yong Soo would have been quite sufficient.

However it does not seem to me to matter whether the defendant and Tan Yong Soo agreed to this between them to enable Tan Yong Soo to get over his immediate difficulties and at the same time to put the defendant in a position to stop payment of the cheques or not. What does matter is whether there was anything to indicate to P.W.1 that the situation in November, 1963, was any different to what it had been since May,

1963, when the practice began of the plaintiffs issuing delivery orders against post-dated cheques given to them by the rice mill. I do not think that there was and accordingly the plaintiffs in my opinion had no knowledge of any irregularity and were not negligent in having no such knowledge. In my opinion there is no evidence that the plaintiffs and Tan Yong Soo had acted in collusion to defraud the defendant as alleged in paragraph 9 of the defence.

It is not clear whether the defendant is saying that, as the rice mill failed to deliver the rice to him in payment for which the cheques were given, there has been a total failure of consideration. But if he is, the answer in this case is that total failure of consideration is a defence against an immediate party, but is no defence against a remote party who is a holder in due course. (*Chalmers* on Bills of Exchange, 12th Edition, page 97).

The other defence put forward by the defendant is that crossing the cheques with the words "Credit A/c Heng Seng Oil and Rice Mill" is a restrictive endorsement under section 35 of the Bills of Exchange Ordinance, 1949. Section 35 reads as follows:—

"35. (1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed 'Pay D only', or 'Pay D for the account of X', or 'Pay D or order for collection'.

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement."

The defendant submits that this endorsement prohibits the further negotiation of the cheques with the result that the plaintiffs can only be acting as collecting agents.

The case of *National Bank* v. *Silke* [1] is very much in point with the present case. In that case the defendant drew on the Camden Town Branch of the Alliance Bank a cheque for £450 which he handed to one J. F. Moriarty. The cheque ran "Pay to the order of J. F. Moriarty Esq. £450" and was crossed by the drawer "Account of J. F. Moriarty, Esq., National Bank, Dublin". Moriarty endorsed the cheque and sent it to the plaintiffs, the National Bank, at Dublin, in a letter directing them to credit his account with that sum. His account was then slightly overdrawn. The plaintiffs wrote acknowledging the receipt of the cheque "for your credit". The cheque arrived in Dublin on the 30th April and the amount was at once placed to Moriarty's credit, which made a balance of about £443 to his credit. On the same day the plaintiffs sent the cheque to London for collection. It was presented at the Camden Town Branch on the 2nd May and was dishonoured, the defendant having given directions to the bank not to pay it on the ground that it had been obtained from him by false representations. In the meantime cheques of Moriarty had been paid by the National Bank which reduced his balance to £46. 19s. It was held that the plaintiffs were entitled to recover upon the cheque for it contained no words prohibiting transfer or indicating an intention that it should not be transferred. The words amounted to nothing more than a direction to the plaintiffs to credit the amount of the cheque to Moriarty's account when they had received it.

In my opinion the words "Credit A/c Heng Seng Oil and Rice Mill" do not constitute a restrictive endorsement but are a mere direction not to credit any other customer's account but the rice mill's account.

A banker who is asked by a customer to collect a crossed cheque and who, pursuant to a contract express or implied, credits the customer forthwith with the amount of the cheque before that amount has been received becomes a holder in due course. The payment that he subsequently receives on the cheque is for himself and not for the customer. This position is not altered whether the amount of the cheque is drawn against or not by the customer subsequent to its crediting or the amount is utilised by the banker in reduction of an overdraft. The question must be whether there exists an agreement to give immediate credit before clearance. (*Bank of China* v. *Synn Lee & Co. Ltd.* [2])

As I have already said the plaintiffs accepted post-dated cheques from May, 1963, and issued delivery orders in respect of those cheques. P.W.1 would put the cheques in chronological order and keep them in his safe. On the due date the cheques were credited to the rice mill's account, thereby reducing the rice mill's overdraft, and then were cleared through normal banking channels. This was done by agreement between the plaintiffs and the rice mill.

It follows that in my opinion the plaintiffs are holders in due course of these 5 cheques and are entitled to succeed. There will therefore be judgment for the plaintiffs as claimed with costs.

Judgment for the plaintiffs.

Solicitors: *Presgrave & Matthews; Jayadeva, Zahir & Ismi.*